

CITY of ALBUQUERQUE
TWELFTH COUNCIL

COUNCIL BILL NO. 0-51

ENACTMENT NO.

45-1996

SPONSORED BY: Alan B. Armijo

ORDINANCE

AMENDING SECTIONS 9-12-2 THROUGH 9-12-9 ROA 1994 OF THE ALBUQUERQUE
POLLEN CONTROL ORDINANCE; DECLARING CERTAIN DESIGNATED TREES A
PUBLIC NUISANCE AND HEALTH PROBLEM AND PROHIBITING THEIR SALE WITHIN
THE CITY OF ALBUQUERQUE; REQUIRING THE MAYOR TO CONDUCT POLLEN
COUNTING AND SAMPLING; AND PROVIDE PUBLIC EDUCATION.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
ALBUQUERQUE:

Section 1. Section 9-12-2 ROA 1994 is amended as follows:

9-12-2 LEGISLATIVE FINDINGS.

(A) The Council finds that there is sufficient information to believe that
certain trees and shrubs produce allergens that adversely impact the health and
well-being of many of its residents, and that actions to reduce the production of these
harmful allergens are therefore appropriate.

(B) The Council further finds that many residents desire to reduce their
consumption of water for landscaping, and that all trees and shrubs should also be
labeled as to the approximate level of water requirements.

(C) The Council further finds that there is sufficient clinical and statistical
evidence that the Albuquerque regional area has serious health problems from
allergies due to airborne tree pollens which affect a substantial proportion of the
population; and that many people in all age groups regardless of their health condition
may be at considerable risk of developing such allergies from airborne tree pollens as
their concentrations increase in our environmental conditions; and that therefore
actions to reduce the production of these pollens which cause the greatest health
problems are essential.

(D) That the Council further finds that it is essential to provide the City of

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1 Albuquerque with adequate pollen counting and measurement for various facilities and
2 sites as identified by the Mayor, and issue periodic public health advisories.

3 Section 2. Section 9-12-3 ROA 1994 is amended as follows:

4 9-12-3 INTENT.

5 (A) This article is intended to require labeling information that will enable
6 residents to make knowledgeable and informed decisions about planting certain trees
7 and shrubs insofar as their potential for allergen production and water requirements.
8 This should assist in accomplishing the further intent of this article of discouraging
9 the planting of those trees and shrubs which create the greatest pollen health
10 problems and which excessively consume scarce city water.

11 (B) It is further intended that adequate sampling and measuring of the pollen
12 content of the air within the City of Albuquerque shall occur on an appropriate
13 periodic basis utilizing state-of-the-art measuring equipment.

14 (C) It is further intended that the sale and purchase of those wind-pollinated
15 trees of certain genera, species or cultivars/varieties, known to produce aeroallergens
16 at serious public health levels shall be prohibited.

17 (D) It is further intended that the City of Albuquerque utilize appropriate
18 resources to provide public education that promotes community awareness on the
19 issue of tree pollen.

20 (E) It is further intended that the City shall determine the relative numbers
21 of wind pollinated trees of selected genera by means of inventory and survey of
22 public and private landscaping within the City of Albuquerque, excluding the bosque,
23 as follows:

24 (1) Public Property - Trees on public property shall be inventoried
25 by the Urban Forester of the Parks and General Services Department.

26 (2) Private Property - Tree numbers on private property shall be
27 determined by means of a scientifically designed and statistically valid survey
28 managed by the City.

29 Results of the inventory and survey shall be provided to the Mayor and Council
30 no later than December 1, 1997.

31 Section 3. Section 9-12-4 ROA 1994 is amended as follows:

32 9-12-4 DEFINITIONS.

1 For the purpose of this article, the following definitions shall apply unless the
2 context clearly indicates or requires a different meaning.

3 **AEROALLERGENS.** Airborne or air transported particle or agent which induce
4 allergic reactions or responses.

5 **ALLERGIC REACTION.** Altered body reaction or response to an antigen.
6 production of antibody.

7 **CITY -** Areas within the City limits of Albuquerque presently or which are
8 annexed in the future.

9 **COMMERCIAL GROWER -** Person or business which cultivates plants for
10 wholesale or retail sale.

11 **COMMERCIAL GROWING -** Growing or propagation of plants for wholesale or
12 retail sale.

13 **COTTONLESS -** Male sex of a variety, species or cultivar of the genus Populus
14 which does not produce seed covered with hairs or cotton.

15 **DIOECIOUS -** Having male and female reproductive structures on separate
16 plants.

17 **DIRECTOR -** The Director of the Environmental Health Department.

18 **FRUITLESS -** Male sex of a variety species or cultivar which does not produce
19 seeds or fruit.

20 **MALE -** Male or pollen producing member of a species either naturally unisexual
21 or horticulturally developed or propagated.

22 **MAYOR -** Mayor, or Chief Administrative Officer of the City of Albuquerque.

23 **MONOECIOUS -** Having male and female reproductive structures on the same
24 plant.

25 **PERSON -** Means any individual, company, firm, corporation, association,
26 group, political subdivision or their agents, legal representatives or assigns.

27 **PLANTING -** Placing or putting a plant in the ground for growth.

28 **POLLEN -** Male reproductive cell produced by the anther of the flowering
29 structure of higher plants whether monoecious or dioecious.

30 **REGULATED CULTIVAR -** Species or variety developed and maintained under
31 cultivation and for which planting, growing or sale is restricted.

32 **REGULATED GENERA -** Genus of plants which one or more of its species

1 having restrictions on planting, growing or sale.

2 TREES AND SHRUBS. Single- or multi-stemmed woody plants of indeterminate
3 height.

4 Section 4. Section 9-12-5 ROA 1994 is amended as follows:

5 9-12-5 REGULATED TREES.

6 (A) Regulated genera, species, cultivars or varieties for which growing, sale,
7 importation or planting is prohibited include the following:

8 (1) Genus Cupressus - Cypress - all members.

9 (2) Genus Juniperus - "Juniper" a/k/a "Cedar"

10 (a) all species, cultivars or varieties which exceed 2' when mature
11 and are not female only.

12 (b) all species, cultivars or varieties which meet the above height
13 and female only criteria must be so labeled prior to sale.

14 (c) Juniper species, varieties or cultivars which may be grown,
15 imported, sold and planted are listed in the Albuquerque Plant List.

16 (3) Genus Morus - "Mulberry" - all.

17 (4) Genus Populus - Cottonwoods and Poplars - All species, varieties
18 or cultivars of the genus excepting P. fremontii var. Wislizeni "Rio Grande"
19 Cottonwood and P. tremuloides "Quaking Aspen," and P. acuminata, "Lance leaf or
20 Mountain Cottonwood" providing that each of the named species of tree sold is
21 labeled as high pollen/high allergen potential.

22 (5) Genus Ulmus - "Elm" - all members.

23 (6) The following genera of wind pollinated trees may be sold and
24 planted in the City of Albuquerque provided that they are identified as high
25 pollen/high allergen potential by means of individual labels:

26 (a) - Platanus - "Sycamore" - London Plane Tree

27 (b) - Fraxinus - "Ash"

28 Section 5. Section 9-12-6 ROA 1994 is amended as follows:

29 9-12-6 PROCESS. All suppliers and sellers both retail and/or wholesale are prohibited
30 from selling the trees listed in 9-12-5 above.

31 Section 6. Section 9-12-7 ROA 1994 is amended by adding the following new
32 section:

1 9-12-7 PROHIBITED ACTIVITIES.

2 (A) Growing Prohibited. After the effective date of this ordinance
3 commercial growing of regulated tree genera, species, cultivars or varieties within
4 the City is prohibited.

5 (B) Importation Prohibited. After the effective date of this ordinance
6 importation of regulated tree genera, species, cultivars or varieties into the City of
7 Albuquerque for growing, sale or planting is prohibited.

8 (C) Sale Prohibited. After the effective date of this ordinance wholesale or
9 retail sale of regulated tree genera, species, cultivars or varieties within the City of
10 Albuquerque is prohibited.

11 (D) Planting Prohibited. After the effective date of this ordinance the
12 planting of regulated genera, cultivars or varieties within the City of Albuquerque is
13 prohibited.

14 Section 7. Section 9-12-7 ROA 1994 is amended as follows:

15 9-12-8 ADMINISTRATION.

16 (A) The Mayor shall be responsible for the enforcement of this article and
17 may prescribe possible procedures or regulations to carry out the intent and purposes
18 of this article.

19 (B) The Mayor may grant a variance to provisions of this article according
20 to the criteria listed herein. Any request for variance shall name the genus, species
21 and/or variety, number of plants, location(s), the scientific, historical, educational,
22 cultural or architectural purpose that would be served.

23 Section 8. Section 9-12-8 ROA 1994 is amended as follows:

24 9-12-9 COMPLIANCE/ENFORCEMENT.

25 (A) The Mayor or his designated representative is authorized to make such
26 inspections as may be necessary to enforce this article, and no person shall impede
27 or interfere with inspections made hereunder. The Mayor or his designated
28 representative, after proper identification, shall be permitted to enter, at any
29 reasonable time, business premises where trees covered by this article are sold within
30 the city for the purpose of making inspections to determine compliance with this
31 article.

32 (B) Upon notification of violation by designated City enforcement staff, the

1 offender shall have seven calendar days to remove or legally dispose of the tree(s)
2 found in violation. Failure to comply after seven days will result in further
3 enforcement action.

4 Section 9. Section 9-12-9 ROA 1994 is amended as follows:

5 9-12-10 PENALTY.

6 (A) Any person who violates any of the provisions of this article shall be
7 deemed guilty of a petty misdemeanor and, upon conviction thereof, shall be
8 punished by a fine not to exceed \$500.

9 9-13-10 SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word
10 or phrase of this ordinance is for any reason held to be invalid or unenforceable by
11 any court of competent jurisdiction, such decision shall not affect the validity of the
12 remaining provisions of this ordinance. The Council hereby declares that it would
13 have passed this ordinance and each section, paragraph, sentence, clause, word or
14 phrase thereof irrespective of any provision being declared unconstitutional or
15 otherwise invalid.

16 9-13-11 COMPILATION. This ordinance shall be incorporated in and made part of the
17 Revised Ordinances of Albuquerque, New Mexico, 1994.

18 9-13-12 EFFECTIVE DATE. This ordinance shall take effect on August 1, 1997.

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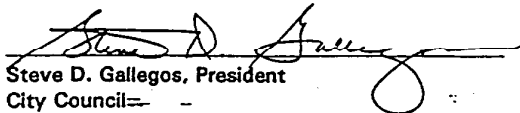
1 PASSED AND ADOPTED THIS 21st DAY OF October, 1996

2 BY A VOTE OF: 6 FOR 2 AGAINST.

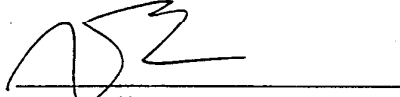
3 Yes: 6

4 No: Brasher, Bregman

5 Excused: Robbins

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8 Steve D. Gallegos, President
City Council--

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10 APPROVED THIS 12th DAY OF November, 1996

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12 
13 Martin J. Chavez, Mayor
14 City of Albuquerque

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16 ATTEST:

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18 City Clerk
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